

IN THE COURT OF CRIMINAL APPEALS

**The State of Texas,**  
Appellant  
v.  
**Gordon Heath Elrod,**  
Appellee

PD-0704-16 FILED  
PD-0705-16 COURT OF CRIMINAL APPEALS  
PD-0706-16 11/21/2016  
ABEL ACOSTA, CLERK

Court of Appeals Nos.:  
05-15-01219-CR, 05-15-01221-CR, &  
05-15-01222-CR

**State's First Motion for Extension of Time  
to File State's Opening Briefs**

The State of Texas respectfully requests, in accordance with the Texas Rules of Appellate Procedure, that this Court grant the State an extension of time to file the State's Opening Brief in the instant cases. In support, the State shows the following:

1. In these cases, the Criminal District Court No. 2 of Dallas County overruled the magistrate's finding of probable cause based on a warrant affidavit, and it granted Appellee's pretrial motions to suppress (which were identical in all three cases). In the trial court, these cases were styled *The State of Texas v. Gordon Heath Elrod*, nos. F15-40913-I, F15-40914-I, and F15-40915-I.
2. The State then appealed the trial court's ruling to the Fifth District Court of Appeals in Dallas. In the Court of Appeals, these cases were styled as *The State of Texas v. Gordon Heath Elrod*, nos. 05-15-01219-CR, 05-15-01221-CR, and 05-15-01222-CR.
3. The State argued in the Court of Appeals that the trial court abused its discretion by overruling the magistrate's finding, but the Court of Appeals

affirmed the trial court's judgments on May 27, 2016. *State v. Elrod*, Nos. 05-15-01219-CR, 05-15-01221-CR, 05-15-01222-CR, 2016 Tex. App. LEXIS 5706, at \*1 (Tex. App.—Dallas May 27, 2016) (mem. op., not designated for publication).

4. The State did not file any motion for rehearing or en banc reconsideration.
5. The State's Petitions for Discretionary Review were filed in this Court on July 27, 2016.
6. This Court granted the State's petitions on October 19, 2016.
7. The State's Opening Briefs are currently due November 18, 2016.
8. The State respectfully requests a 30-day extension of time to December 18, 2016.
9. The State has not previously requested an extension of time to submit its Opening Briefs in these cases.
10. The undersigned prosecutor will be unable to complete the State's Opening Briefs during the present briefing period for the following reasons:
  - a. The undersigned has been responsible for representing the State in an evidentiary hearing to address an application for a writ of habeas corpus in a capital case, *Ex parte Tyrone Cade*, W11-33962-R(A).
  - b. The undersigned was responsible for preparing the State's Opening Brief in *Ex parte Andrew Pete*, PD-0771-16, PD-0772-16, & PD-0773-16.

- c. The undersigned has responded to numerous applications for a writ of habeas corpus on behalf of the State and participated in one evidentiary hearing.

The State therefore prays that this Court grant the State's motion and order the State's opening briefs due on December 18, 2016.

Respectfully submitted,



BRIAN P. HIGGINBOTHAM  
Assistant Criminal District Attorney  
State Bar No. 24078665  
Frank Crowley Courts Building  
133 N. Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399  
(214) 653-3625 | (214) 653-3643 *fax*  
brian.higginbotham@dallascounty.org

SUSAN HAWK  
Criminal District Attorney  
Dallas County, Texas

### **Certificate of Service**

I certify that true copy of this document was served on Lawrence B. Mitchell as appellate counsel for Gordon Heath Elrod and Lisa C. McMinn as State Prosecuting Attorney. Service was made by email to judge.mitchell@gmail.com and to information@spa.texas.gov, on November 18, 2016.



Brian P. Higginbotham